(2) Supreme Court, U.S.
FILED

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DOCKET NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

United States

Respondent

v.

Pedro Jose Hernandez, a/k/a Juan Pedro, a/k/a Pedro Jose

Petitioner

On Petition For Writ Of Certiorari
To The
United States Court Of Appeals For The First Circuit

APPENDIX TO PETITION FOR WRIT OF CERTIORI
Volume 1 of 2

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A1

Presentence Report
United States v. Pedro Jose Hernandez
Docket No. 01-10013
Prepared for the United States District Court for the District of Massachusetts
Prepared January 10, 2002
Revised February 7, 2002

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA
vs.
Pedro Jose Hernandez
(a/k/a Porfirio Diaz, Victor Rincon, Porfirio Guzman)

Docket No. 01-10013
Defendant No. 3

PRESENTENCE REPORT

Prepared for: Honorable Morris E. Lasker, U.S District Court Judge
Prepared by: Nicole F. Barrasso, U.S. Probation Officer
Sentencing Date: 2/14/02 Office Location: Boston
Offense: Pleaded Guilty

CTS:	Title & Section:	Charges:
1	21 U.S.C. § 963	Conspiracy to Import Heroin

Date Offense Concluded: 8/26/99
Counts to be Dismissed: None
Date of Arraignment: 2/1/01
Custodial Status: Detained since 2/5/01.
Date of Birth: 10/4/71 Age: 30 Dependents: 2
Citizenship:Dominican Republic Sex: Male
FBI No.: 313691MA2
SSN: unknown, possibly 347-64-2519 Race: Black/Hispanic
Other ID No.: A093324224

Education: 5 yrs. (unv.) U.S. Marshal No.: 23517-038
Residence Address: Plymouth County House of Correction
26 Long Pond Road
Plymouth, MA 02360
Mailing Address: Same.
Detainers: INS New York Parole Warrant
Codefendants: Jesus Hernandez, Isidro Hernandez, Daniel DelRosario, Juan Espinal

Assistant U.S. Attorney	Defense Counsel
Susan Poswistilo	Richard M. Welsh
617-748-3100	80 Worcester Street
	Grafton, MA 01530
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	(Appointed)

Date report prepared: 1/10/02 Mandatory Minimum ~
Revised: 2/7/02

PART A. THE OFFENSE

Charges and Convictions

(A) On January 11, 2001, a grand jury sitting in U.S. District Court in Boston, Massachusetts returned a sealed, one-countIndictment charging Jesus Hernandez, Isidro Hernandez, "Pedro Jose" LNU, **a/k/a "Juan Pedro",** Daniel Delrosario, a/k/a "Eduardo Morales," a/k/a "Pipa," and Juan Espinal with Conspiracy to Import Heroin, in violation of 21 U.S.C. § 963.

(B) Count One of the Indictment charges that from in or around July 1999, and continuing until on or about August

26, 1999, at Lynn, Lawrence, and elsewhere in the District of Massachusetts, and elsewhere in the United States, the defendants knowingly and intentionally combined, conspired, and agreed together, and with persons known and unknown to the Grand Jury, to import a Schedule I controlled substance, to wit: heroin, into the United States from a place outside thereof, in violation of 21 U.S.C. § 952 (a) , all in violation of 21 U.S.C. § 963.

(C) On January 12, 2001, arrest warrants for the defendants issued.

(D) On January 29, 2001, the defendant, who was being held in state custody, made an initial appearance without counsel in U.S. District Court in Boston, Massachusetts before U.S. Magistrate Judge Judith G. Dein, who scheduled a detention hearing for February 1, 2001 and ordered that counsel be appointed for the defendant.

(E) On February 1, 2001, the defendant was arraigned in U.S. District Court in Boston, Massachusetts by Chief U.S. Magistrate Judge Joyce L. Alexander, who ruled that since the defendant was being held in state custody, a detention hearing would not be held until necessary. On February 5, 2001, Magistrate Judge Alexander ordered that the defendant be detained.

(F) On September 26, 2001, the defendant appeared in U.S. District Court in Boston, Massachusetts for a detention hearing before Magistrate Judge Alexander. The defendant then waived the detention hearing and consented to voluntary detention.

(G) On November 27, 2001, the defendant appeared in U.S. DistrictCourt in Boston, Massachusetts and entered a guilty plea to the Indictment before U.S. District Court Judge Morris E. Lasker, who accepted the plea and scheduled disposition for February 14, 2002.

Codefendants

(H) Jesus Hernandez: Case is pending; Jesus Hernandez remains a fugitive.

(I) Isidro Hernandez: On December 6, 2001, Isidro Hernandez waived Indictment and pled guilty to a one-count Superseding Information charging him with Importation of Heroin, in violation of 21 U.S.C. § 960(a). Disposition is scheduled for February 26, 2002.

(J) Daniel Delrosario: On September 19, 2001, Delrosario pled (j^7) guilty to the Indictment. Disposition is scheduled for March 20,2002.

(K) Juan Espinal: On December 7, 2001, Espinal pled guilty to the Indictment. Disposition is scheduled for February 27, 2002.

Related Cases

(L) None.

Plea Agreement

(M) The Rule 11(e) (1) (B) plea agreement is attached hereto.

Offense Conduct

(1) On December 21, 2001, Assistant U.S. Attorney Susan Poswistilo submitted the following statement of facts:

(2) In approximately December 1998, Betty Ann Rodriquez ("Rodriquez") attended a party at the residence of codefendant, Daniel DelRosario ("DelRosario"). At that time, Rodriquez met Pedro Jose **Hernandez ("Pedro Jose")** and Jesus Hernandez ("Jesus"), who were also attending the party. DelRosario told Rodriquez that he was intending to make a trip to Ecuador to carry heroin back to the United

States.

(3) In March 1999, Rodriquez spoke again to DelRosario. During that conversation, DelRosario told Rodriquez that a couple of people had come back from Ecuador, and that these individuals had made it back safely, without being arrested. DelRosario told Rodriquez that these individuals had swallowed the heroin in order to carry it back.

(4) Based upon statements made by Christobal DelRosario(hereinafter "Christobal") , in approximately late February or earlyMarch 1999, Christobal was asked by Pedro Jose, Jesus, and a third individual known as "Nino," to take a trip to Ecuador for the purpose of bringing back drugs. Christobal made the trip to Ecuador in March 1999.

(5) Prior to the trip, Christobal met with Jesus, Pedro Jose and Nino outside his home. Jesus gave Christobal a baby carrot and told him to swallow it whole, in order to see if he could swallow the heroin pellets. Christobal successfully passed the test, and Jesus and Pedro **Jose** told Christobal that they wanted him to go. Christobal went with Jesus, Pedro **Jose** and Nino to a travel agency to purchase the ticket.

(6) The day before he was scheduled to leave, Christobal received a telephone call from defendant Isidro Hernandez ("Isidro") , who told him the time that Jesus would pick him up to go to the airport. The next morning, Jesus, Pedro Jose and Nino drove Christobal from Lawrence to Jesus's apartment in Connecticut. Because the plane did not leave until that evening, Christobal spent the day with Isidro, his girlfriend, Jesus, Pedro Jose and others.

(7) Isidro, Jesus, Pedro Jose and Nino then drove Christobal to the airport. Before arriving there, Jesus gave Christbbal approximately $10,000 in cash, and told him someone would pick it up. In fact, Christobal would return

the money to Jesus when they met up in Ecuador.

(8) Christobal remained in Ecuador for over one week, meeting on several occasions with Jesus and with the source of supply. On at least one occasion, Christobal spoke by telephone to Isidro. Isidro asked whether Christobal had met up with the source of supply yet; when Christobal responded negatively, Isidro told him Jesus would be returning to Ecuador.

(9) On the morning Christobal was to return to the United States, he met with the source of supply, and was given 47 pellets of heroin, Christobal successfully swallowed all 47 pellets, and then went to the airport where he departed for New York.

(10) Upon arriving in New York, Christobal was met at the airport by Isidro and a woman. The three drove to a house in Connecticut, believed to be the woman's home, and spent the night. Isidro gave Christobal a laxative, and during the ensuing two hours, Christobal expelled the 47 pellets. With each pellet he expelled, Isidro instructed him to retrieve it from the toilet bowl, wash it off, and give it to him. Christobal complied. He later observed Isidro leave the house carrying all of the pellets in a bag.

(11) Christobal expected to be paid $6,000 for his trip. On the night he returned to his home in Massachusetts, Jesus gave him $3,000 cash. Christobal later received another cash payment of $2,000 from Jesus. When he was still owed money, he contacted Isidro, who agreed to send him the rest of the money. Christobal then received a Western Union money order wire in the amount of $975 from Isidro.

(12) In or around July 4, 1999, DelRosario asked Rodriquez if she was willing to go to Ecuador and swallow heroin for transport back to the United States. DelRosario

told Rodriquez that she could make approximately $8,000 if she made the trip.

(13) After the July 4, 1999 conversation, DelRosariO spoke to Rodriquez on an approximately weekly basis in order to see whether she would make the trip. DelRosariO told RodriqueZ that there was going to be a trip during the first week of August 1999, and that she therefore needed to let him know if she was interested.

(14) Approximately three weeks before an August 12, 1999 trip to Ecuador, Victor Balbuena spoke with co-defendant Juan Espinal ("Espinal") . Espinal asked Balbuena whether he wanted to take a trip to Ecuador for the purpose of picking up drugs to bring back to the United States. At the time, Balbuena owed approximately $300 to Espinal, and expected to clear his debt with him by taking the trip. Balbuena agreed.

(15) Prior to the trip, Balbuena met with Espinal at Espinal's residence. Also present at the meeting were Jesus Hernandez and the individual known as "Nino." On Jesus HernandeZ' direction, Balbuena and Nino went outside of Espinal'S apartment, where Nino gave Balbuena a carrot to swallow, in order to ascertain whether he would be able to swallow the heroin pellets. Balbuena successfully passed the test. Discussions were then held regarding Balbuena's travel arrangements. Balbuefla was given money to obtain a passport. Two days before the trip, **Pedro Jose** drove Balbuena to the home of **Pedro Jose's** sister. He again met with Jesus and was given money to pay for travel documents.

(16) Rodriquez agreed to make the trip to Ecuador in August 1999. Prior to the trip, she met with DelRosario, Jesus and **Pedro Jose** at DelRosariO's residence and, like Balbuena, was given the carrot test. She, DelRosariO, Jesus and **Pedro Jose** entered DelRosariO'S bedroom, where Jesus

handed Rodriguez pieces of carrot, soaked in oil. Rodriquez was told to swallow the pieces whole. After she successfully swallowed three carrots, Jesus asked Rodriquez if she wanted to go on the trip. During this meeting, they also discussed travel arrangements, and whether or not Rodriquez had a passport.

(17) On August 9, 1999, the evening following the meeting, Jesus gave DelRosario a plane ticket for Rodriquez' travel to Ecuador. DelRosario gave the ticket to Rodriquez. DelRosario also accompanied Rodriquez to the passport office to obtain a U.S. passport. Rodriguez' travel was scheduled for August 12, 1999, departing from Newark, New Jersey.

(18) On August 12, 1999, DelRosario told Rodriguez that he would drive her to the airport. DelRosario, **Pedro Jose,** and Balbuena met her at her home, and they all drove together to an apartment in Norwalk, Connecticut. In the apartment, Jesus gave Rodriquez $9,000 in cash, and placed a pair of sneakers in her luggage. Jesus told Rodriquez that the sneakers were for his brother, Isidro, who would meet Rodriquez in Ecuador. Jesus also gave Balbuena cash and directed him to give the money to Isidro.

(19) When Rodriquez and Balbuena arrived in Guayaquil, Ecuador, they were met at the airport by Isidro and a taxi driver, who drove directly to the MiCasa Hotel in Guayaquil.

(20) At the MiCasa Hotel, Rodriquez gave Isidro the $9,000 from Jesus. Isidro asked Rodriquez if she had a pair of sneakers for him. Rodriquez gave Isidro the sneakers, from which Isidro removed another $3,000. Balbuena also gave Isidro the money that Jesus had previously given to him. When he received the money, Isidro counted it in Rodriguez's presence.

(21) Rodriquez and Balbuena stayed at the MiCasa Hotel until August 19, 1999, which was their scheduled return date to the United States. They did not return on August 19, 1999, however, because the heroin had not yet arrived from the Colombian source of supply.

(22) While in Ecuador, Rodriguez met with the Colombian source of supply on three occasions. On the first occasion, Rodriguez and Isidro met the Colombian at the airport. The Colombian gave Isidro a vial with liquid in it and some capsules. Rodriquez and Balbuena took this prior to swallowing the heroin pellets in order to constipate them, so that the pellets would not pass through their systems prematurely.

(23) At the second meeting with the Colombian source of supply, which Rodriguez also attended, Isidro gave the Colombian a brown bag that contained $18,000 in cash. Rodriguez saw the Colombian on a third occasion, when he met Isidro at Isidro's house.

(24) Rodriquez and Balbuena did not depart Ecuador until August 26, 1999. Isidro purchased their return tickets for that date. During their second week in Ecuador, Rodriquez and Balbuefla stayed at Isidro's home. During that week, Isidro contacted his then-wife Elizabeth Hernandez and requested that she transfer money to him via Western Union. Rodriquez accompanied Isidro on three occasions to Western Union offices in Guayaquil to pick up the money.

(25) On the evening of August 25, 1999, Isidro brought the heroin, packaged in balloons in the shape of thumb-sized pellets, to Rodriguez and Balbuena. Isidro dropped the pellets into a bowl and directed them to swallow them. Rodriquez and Balbuena swallowed in excess of 1oo pellets.

(26) On August 26, 1999, Isidro drove Rodriquez and Balbuefla to the airport. Prior to leaving, RodriqueZ got sick, and spit up three of the pellets which she flushed down the toilet. While traveling on the plane, Rodriquez got sick again and threw up two pellets.

(27) On August 26, 1999, Rodriquez and Balbuena were arrested at the Bush Intercontinental Airport in Houston, Texas, after arriving on their flight from Guayaquil. Rodriguez and Balbuena had been en route to Newark, New Jersey when they passed through the U.S. Customs Inspectors in Houston.

(28) According to an offense report and drug analysis of the Houston Police Department, at the time of their arrest, Rodriquez and Balbuena were in possession of approximately 995 grams of heroin. The heroin was contained in approximately 112 pellets that Rodriguez and Balbuena had swallowed (although two of these pellets were found in Rodriquez' bra)

(29) Rodriquez and Balbuena expected to receive payment of approximately $6,000-$8,000 from Jesus and Isidro. DelRosario told Rodriguez that she would be paid $8,000 for the trip. However, when Rodriguez was in Ecuador, Isidro told her that she would be paid $6,000. After her arrest, Rodriquez contacted DelRosario and asked for assistance. DelRosario told Rodriquez that he would get in touch with both Isidro and Jesus. Rodriguez did not receive any assistance from these individuals, and DelRosario stopped accepting Rodriguez' collect telephone calls.

(30) After the arrest of Balbuena and Rodriguez, Espinal contacted **Pedro Jose's girlfriend.** He told her to give **Pedro Jose** the message that the people they sent to Ecuador had been arrested, and needed help. After the phone call, Balbuena received a letter from **Pedro** Jose enclosing $500

from "all the guys."

Victim Impact

(31) There are no identifiable victims in the present case.

Obstruction of Justice

(32) There is no available information to indicate that the defendant has obstructed justice.

Acceptance **of Responsibility**

(33) The defendant is being granted a three-level reduction for his acceptance of responsibility pursuant to U.S.S.G. § 3El.1(a) and (b) (2), as he admitted his involvement in the offense and entered a timely guilty plea, thus allowing the government to avoid trial preparation and the court to conserve its resources.

Offense Level Computation

(34) The Guideline Sentencing Range has been calculated using the guidelines in effect at the time of sentencing, that is, the guidelines contained in the Guideline Manual issued 11/1/01. The guidelines that affect the offense level and/or the criminal history calculations have not changed since the instant offense was committed.

(35) Violations of 21 U.S.C. § 963 are located at various guidelines. Where, as here, the substantive offense of the charged conspiracy is 21 U.S.C. § 952(a), Importation of a Controlled Substance, the applicable guidelines is U.S.S.G. § 2Dl.1.

(36)Base Offense Level: As the defendant is being held

accountable for 995 grams of heroin, pursuant to U.S.S.G. § 2Dl.l(a) (3) and 2D1.1(c) (5), the base offense level is 30

(37) Specific Offense Characteristics: None. 0

(38) Adjustment for Role in the Offense: None. 0

(39) Victim Related Adjustment: None. 0

(40) Adjustment for Obstruction of Justice: None. 0

(41) Adjusted Offense Level (subtotal) : 30

(42) Adjustment for Acceptance of Responsibility: -3

(43) Total Offense Level: 27

CHAPTER FOUR ENHANCEMENTS

Career Offender

(44) The career offender provisions at U.S.S.G. § 4B1.l are applicable in this case as: (1) the defendant is over the age of 18; (2) the instant offense is either a controlled substance violation or a crime of violence; and (3) the defendant has two prior convictions of either a crime of violence, or an applicable controlled substance violation.

(45) U.S.S.G § 4Bl.l directs that the offense level is determined by the offense statutory maximum, in this instance 20 years. The corresponding offense level is 32.
(46) A three (3) point adjustment is deducted for Acceptance of Responsibility, resulting in a Total Offense Level of 29.

PART B. THE DEFENDANT'S CRIMINAL HISTORY

Juvenile Adjudications

(47) None known.

Criminal Convictions

Date of Arrest/ Arraign.	Charge Agency	Date Sentence Imposed Disposition	Guideline Score
(48)			4A1.1(b)
9/22/90 (Age 18)	Att. Crim. Poss. Contr. Sub. 3rd Degree Ind#l3007-90 New York Supreme Ct.	2/4/91: Pled G., 6 mths., cmtd.	2

(49) The above information was derived from a preliminary report of the Probation Office for the Southern District of New York, which advised that arrest reports and court documents will be forwarded. Available records indicate that the defendant was represented by counsel. The defendant's FBI NCIC record indicates that the defendant also had been arraigned on a charge of Criminal Possession of a Narcotic Drug. According to the NCIC record, the offense occurred, and the defendant was arrested, on September 20, 1990. This case originated in New York Criminal Court as Dkt. No. 90N083 545.

(50)			4A1.l(a)
2/3/91 (Age 19)	Att. Robbery, 1st Degree lnd#41494-91	1/10/92: Pled G., 18 to 54 mths, cmtd.	3

New York Supreme
Ct.

(51) The above information was derived from a preliminary report of the Probation Office for the Southern District of New York, which advised that arrest reports and court documents will be forwarded. The defendant's FBI NCIC record indicates that the offense occurred on January 29, 1991 and that the defendant was arrested on January

31, 1991. The defendant was originally charged with Robbery in the 1st Degree, Attempted Murder in the Second Degree and Criminal Possession of a Weapon in the Second Degree. This case originated in New York Criminal Court as Docket No. 91N010382. On February 13, 1992, the defendant was committed to the Ulster Correctional Facility with a conditional release date of January 29, 1994. He was paroled on July 29, 1992; his parole is due to expire on January 22, 2003. On October 6, 2000, the New York Parole Division issued a warrant for the defendant's arrest, which remains active.

(52)			4A1.1(a)
7/5/95 (Age 23)	Sale of Hlcgn/NarcOtic (3 cts.) Dkt#CR95-0109785 Bridgeport Superior Ct. (Connecticut)	8/30/95: Pled G.; 10/17/95: 21 mths. to serve, 3 yrs. prob. on each ct., conc.	3

(53) Court records indicate that the defendant was represented by counsel. According to a report of the State of Connecticut Office of Adult Probation, on July 5, 1995, the

defendant was arrested while he was selling 7.5 grams of powdered cocaine. A trooper later identified the defendant as the same Dominican male from whom he had purchased quantities of powdered cocaine at the Hernandez Furniture Store in Bridgeport, Connecticut during the past several months. (This store was owned by Isidro Hernandez, the defendant's cousin and a co-defendant in the present case.) The defendant was charged with making sales of cocaine on March 9, and on April 6 and 13, 1995. The defendant was released from the Department of Correction on April 4, 1997 and began his three-year term of supervision, which was due to expire on April 4, 2000. An active arrest warrant was issued for the defendant on March 10, 1998, for violation of probation terms. It should be noted that the defendant has used the following aliases in connection with criminal proceedings in Connecticut: Porfiro Diaz, Porfirio Diaz, and Porfirio Guzman. He has also been identified as using Social Security Number 347-64-2519. A Presentence Report prepared by the State of Connecticut Office of Adult Probation in connection with this conviction is appended hereto, and is further discussed in the Offender Characteristics section of this report.

Criminal History Computation

(54) Based on the above convictions, the defendant has a subtotal criminal history score of 8.

(55) At the time that the instant offense was committed, the defendant was under the criminal justice sentences imposed on January 10, 1991 in md. No. 1494-91 in New York Supreme Court, as the defendant is on parole until January 22, 2003, and on October 17, 1995 in Docket No. CR95-0109785 in Bridgeport Superior Court, as the defendant was on supervision until April 4, 2000. Two (2) points are added, pursuant to U.S.S.G § 4A1.1(d)

(56) The total of the criminal history points is io. According to the sentencing table (U.S.S.G. Chapter 5, Part A) , 10 to 12 criminal history points establish a criminal history category of V.

TOTAL POINTS	10
CATEGORY	V

(57) As detailed above, the defendant is a Career Offender as he has at least two prior felony convictions for either a crime of violence or an applicable controlled substance offense counted separately under the provisions of S 4Al.l(a) (b) or (c), (See offenses specified in ¶ 61, 63, 65). His criminal history category is VI, pursuant to the provisions of U.S.S.G. § 4B1.l.

Pending Charges

(58)

1/12/01 (Age 29)	Poss. Firearm w/o Firearm I.D. Card Dkt#O118CR235A	10/26/01: Def. Warr. Issd.
	Poss. Firearm, not Home/Work, w/o Lic. Dkt#0118CR235B	
	False Name to P.O. Dkt#0118CR235C	
	Oper. MV w/o Lic. Dkt#0118CR235D	
	Resist. Arrest	

Dkt#O118CR235E

Fail. to Signal bef. Stop/Turn.
Dkt#0118CR235F

Oper. MV w/o Lights
DkL#0118CR235G

Fugitive Fr. Justice
Dkt#0118CR235H

Lawrence Dist. Ct.

(59) Court records indicate that the defendant is represented by counsel in the above case. According to a report of the Gang Unit of the Massachusetts State Police, on January 11, 2001, troopers observed a vehicle traveling without its headlights activated. The car pulled to the side of the road, a female entered, and the car took off at a high rate of speed. The car then made a turn without using a turn signal. The car made a quick stop to the side of the road, and the female passenger exited. The troopers then pulled behind the car and activated their blue lights. As three troopers approached the vehicle, the female leaned in and spoke to the driver, who quickly leaned forward, reached down, and appeared to rapidly move his hands in the area of his lap. A trooper who arrived at the driver's door observed the driver, the defendant, dumping white powder, suspected to be cocaine, from a folded dollar bill. The cocaine was all over the defendant's lap, and he appeared to be trying to wipe it away. The defendant exited the vehicle, stated he did not have a driver's license, and refused to provide his name. He appeared to be under the influence of cocaine. As a

trooper returned to the driver's side door, the defendant took off running. After a foot chase, the officers caught the defendant and placed him under arrest. After officers returned to the vehicle, they observed a gun partially hidden under the front seat. During booking, the defendant identified himself as Pedro Hernandez and apparently gave a false birth date of 3/15/66, as he stated his age was 33, but would actually be 34-years-old with this birth date.

Other Arrests

(60)

2/2/91	Robbery, 1st Degree	No disposition reported
(Age 19)	Crim. Poss. of Weapon, 2nd Degree	

This arrest was reported by the Probation Office for the Southern District of New York.

(61)

3/29/01	Asslt. & Batt.	5/21/01: Dism. lack Pros.
(Age 29)	Dktit9918CR7995	
	Lawrence Dist. Ct.	

PART C. OFFENDER CHARACTERISTICS

Personal and Family Data

(Note: The defendant was interviewed with the assistance of an interpreter.)

(62)Pedro Jose Hernandez, who admittedly has used thaliases "Porfirio Diaz" and "Victor Rincon," was reportedly born on October 4, 1971 in the Dominican Republic. The defendant reports that he is a citizen of the Dominican Republic and is in the United States illegally. As noted above, appended hereto is a presentence report completed by the State of

Connecticut Office of Adult Probation (the "Connecticut PSR"). There are a number of discrepancies between the information contained in the Connecticut PSR and the information provided by the defendant to this officer, which are noted further herein. Also, according to the defendant's FBI NCIC report, he has used the following birth dates: March 2, 1966; March 15, 1966; March 30, 1966; and August 15, 1973.

(63) The defendant reported that he is the only child born to Pedro Hernandez Sr. and Joaquina Aristi, although he has half-brothers and half-sisters. According to the defendant, primarily his mother raised him in a humble house in a small, semi-rural town in the Dominican Republic. The defendant reported that he was raised with his mother's four other children in impoverished circumstances. While his mother did the best she could, the defendant related that there were times when he was hungry.

(64) The defendant stated that he saw his father occasionally during his youth, but not often because his father traveled for work. He also stated that his father drank alcohol excessively. His father reportedly physically disciplined him once, although the defendant did not feel this punishment was unwarranted.

(65) When the defendant was approximately 16-years-old, he moved to Puerto Rico to find a job and live with his father, who reportedly was working in construction there. The defendant stated that on a return visit to the Dominican Republic, his father was murdered in a robbery attempt. The defendant related that he did not want to return to the Dominican Republic, given its undesirable economic situation. He instead decided to follow his half-sister, Sefa, to New York City, New York.

(66) The defendant reported that he lived with his sister for

approximately one month, until she decided to return to the Dominican Republic. The defendant remained in New York on his own because his life was "better" there.

(67) According to the Connecticut PSR, the defendant is the third of five children born to the marital union of two life-long natives of Puerto Rico: Porfirio Guzman, a construction worker, and Miriam Diaz, a homemaker. The defendant stated that he was born in New York, New York. He indicated that his childhood was non-problematic and that he was provided with all basic necessities. The defendant resided with his family in Puerto Rico until he relocated to New York in 1991.

(68) Furthermore, it should be noted that the Connecticut PSR indicates the defendant used the social security number 347-64-2519, while the defendant informed this officer that he did not use any social security number. A credit report indicated this number has been used by a "Porfirio Guzman," with various addresses in Bridgeport and Norwalk, Connecticut. One address, 43 Concord Street in Norwalk, Connecticut, is the residence of the defendant's wife, Gloria Rodriguez.

(69) **Father.** Pedro Hernandez was approximately 49-years-old when he was reportedly murdered in the Dominican Republic in 1988 or 1989. The defendant stated that his father had been a photographer and construction worker.

(70) **Mother.** Joaquina Aristi, now approximately age 60, resides in Santo Domingo in the Dominican Republic. She never married. The defendant reported that his mother formerly worked as a cook at a hospital, but is now disabled with heart problems and arthritis.

(71) **Step-mother.** According to the defendant, his father

married Petronila Perozo, now approximately age 55. Although the defendant believes she resides in the Dominican Republic, he has no contact with her.

(72) **Paternal Half-sister.** Sefa Hernandez, age 28, resides in at 90 Hollingsworth Street in Lynn, Massachusetts. Sefa provided this address, as the defendant reported that he does not know her specific street address. The defendant believes she works in a factory, is single, and has three children.

(73) **Paternal Half-brother.** David Hernandez, age 25, resides at 104 Chestnut Street in Lynn, Massachusetts and is reportedly employed as a cook in a restaurant. He is single and has no children.

(74) **Paternal Half-sister**. Yuliza Hernandez, age 22, reportedly lives in Lawrence, Massachusetts and may work in a restaurant. She is single and has three children. The defendant could provide nospecific information, and stated that he has no contact with this sister.

(75) **Paternal Half-brother.** Cesar Hernandez, age 17, resides with his brother, David, in Lynn, Massachusetts and is attending high school. He is single and has no children.

(76) **Maternal Half-brother**. Antonio Rincon, age 42, resides in the Dominican Republic and is employed as a teacher. He is married and has three children.

(77) **Maternal Half-sister.** Mercedes Aristi, age 40 or 41, resides in the Dominican Republic and works in a restaurant. She is single and has two children.

(78) **Maternal Half-brother.** Luciano Aristi, age 38, resides in the Dominican Republic and is a teacher. He is single and has one child.

(79) **Maternal Half-brother.** Jose Aristi, age 37, resides in the Dominican Republic and is employed as a baking instructor. He is single and has three children.

(80) The defendant reported that he was close to his siblings before his arrest, but that only Sefa has visited him, and he has no contact with them via telephone. He reported that he does not know any of his sibling's telephone numbers.

(81) Although the defendant reported that he did not know any telephone numbers of his siblings, his girlfriend provided the telephone number for his sister, Sefa Hernandez. Sefa stated that since his incarceration, she has visited the defendant six times, and he has telephoned her a number of times. Sefa reported that the defendant was born in February or March of 1966 or 1967 in San Rafael de Yuma in the Dominican Republic. She verified the names of the defendant's parents as Pedro Hernandez and Joaquina Aristi, and that codefendant Isidro Hernandez is the defendant's cousin. Sefa verified that the defendant's father died in the Dominican Republic in 1988 or 1989, but related that the circumstances of his death are unclear. She stated that he may have died in a boating accident, or he might have been murdered. At the time of his death, Sefa and the defendant were living together in Puerto Rico, and together moved to New York after their father's death. She stated that she returned to the Dominican Republic after living in New York for approximately one year, but the defendant remained in New York. She is not sure of the reasons behind the defendant's subsequent relocations to Connecticut or Massachusetts, but thinks he may have moved to be closer to girlfriends. Sefa verified theabove address of David and Cesar Hernandez.

(82) **Spouse.** The defendant reported that he married Gloria Rodriguez in Connecticut in 1995 or 1996. He stated that they have been separated for four years, and simply have not

gone through the process of obtaining a divorce. The defendant reported that they have limited contact, but that she has been "encouraging" towards him.

(83) Ms. Rodriguez verified the above information regarding her relationship with the defendant. She stated that he has called her several times during his incarceration, but that since their separation four years ago, their contact has been minimal. She reported that their marriage ended when the defendant left her for his current girlfriend. Ms. Rodriguez denied any history of physical abuse, and stated that the defendant is a caring person with a good heart, who got involved with the wrong people. She reported that the defendant was employed in two factories, one called Trafalger, during their marriage. She further reported that the defendant is a cousin of co-defendant Isidro HernandeZ. Ms. Rodriguez resides at 43 Concord Street in Norwalk, Connecticut and works at a nursing home. She reported that Isidro Hernandez used her address to receive mail, although he in fact lived with his wife across the street, because he was not allowed to be listed on his wife's lease.

(84) According to the Connecticut PSR, Ms. Rodriguez has four felony narcotics convictions dating from January 18, 1989 to November 20, 1991, for which she received terms of incarceration of four years, four years, four years, and 51 months, respectively. She was paroled in December 1993 and discharged from her sentence on September 21, 1994. Further details regarding her background are contained in the Connecticut PSR.

(85) **Children.** The defendant reported that he has been involved with Aura Martinez for the past four years, and that they lived together in Lawrence, Massachusetts prior to his most recent incarceration. They have two children together: Pedro Jose HernandeZ, age two; and Ashley HernandeZ, age six months. The defendant reported that he financially

supported these children prior to his arrest. Ms. Martinez has two other children, and now resides with her four children in an apartment at 47 Veteran Memorial Drive in Peabody, Massachusetts.

(86) Ms. Martinez verified that she and the defendant have been together for four years. She believes that he relocated to Massachusetts to be closer to her. She stated that life has been very difficult for her since the defendant was arrested, as he previously assisted her financially and in caring for her children. Since the defendant's arrest, his son reportedly cries for him every night. Ms. Martinez stated that she is currently employed as a teacher of blind students in Lynn, Massachusetts, but will soon have to leave her job. Her mother has been assisting her with childcare in the defendant's absence, but is ill and will leave the United States in January. Once her mother leaves, Ms. Martinez will not be able to afford day care. Ms. Martinez reported that if the defendant is deported, she plans to move to the Dominican Republic to live with him.

(87) Ms. Martinez further related that the defendant's incarceration is very difficult for his mother, as he has not seen her in 18 years, and she is very ill.

(88) Prior to living in Lawrence, Massachusetts with his girlfriend, the defendant reported that he lived alone in Lynn, Massachusetts for three years. He stated that he previously lived in Norwell, Connecticut for four years; again in Lynn, Massachusetts for less than a year; in New York City, New York for two years; and in Puerto Rico for four years.

(89) When asked if he wanted to impart any other information, the defendant related that he has been alone in the United States for many years and was forced to "grow UP by himself," alone and without any help, and fell into using drugs.

(90) The INS has lodged a detainer against the defendant.

Physical Condition

(91) The defendant is a 30-year-old Black, Hispanic male who stands 5'9" tall and weighs 175 pounds. He has brown eyes and black hair.

According to the defendant, he has no tattoos and only one scar over his right eye. The Connecticut PSR indicates he also has scars on his left cheek and right forearm, and is missing several teeth.

(92) The defendant stated that he has no allergies or serious physical ailments, and takes no medications. He reported that since his incarceration, he has experienced pain in his left knee. He was seen by a prison physician, who ordered an x-ray, but the defendant has not received any treatment.

Mental and Emotional,, Health

(93) The defendant denied any history of mental health treatment or counseling, but related that he believes he could benefit from

counseling. He reported that he sometimes suffers from depression and feels alone without his family. He stated that no treatment is offered at the Plymouth County House of Correction.

Substance Abuse

(94) The defendant reported that since his father's death, he has been using drugs and alcohol. He related that he used

cocaine, marijuana and alcohol every time he felt depressed, which was approximately once per week. The defendant related that there were times when he used these substances more often, up to several times per day, when he lived in New York and Connecticut.

(95) However, the defendant reported that once he met his girlfriend and had children with her, he ceased his substance use. The defendant stated that he has never received any substance abuse treatment.

(96) The Connecticut PSR indicates that the defendant began using marijuana in the fourth grade. The defendant also reported having a crack cocaine habit for about three years in the early 1990s. The defendant stated that he spent all of his money on drugs.

Education & Vocational Skills

(97) The defendant reported that he attended school in the Dominican Republic until the fifth grade (unverified). He reported having received no other training or education.

(98) According to the Connecticut PSR, the defendant completed the sixth grade in Puerto Rico, but suggested that he may have been a special education student. He stated that he repeated the fourth grade twice due to his marijuana use.

Employment Record

(99) The defendant reported that for the entire duration of his residence in the United States, he has earned income by taking odd jobs and being paid off the books, as he is an illegal alien. He stated that he has painted houses, worked in landscaping and in factories; in his words, "whatever he could get." Ms. Martinez verified that this was the defendant's employment during the time she has known him.

(100) According to the Connecticut PSR, the defendant held several jobs. He was employed at Hernandez Furniture in Bridgeport, Connecticut from 1994 to 1995, where he earned $10 to $15 per hour. This store is owned by Isidro Hernandez, the defendant's cousin (also a co-defendant in the instant case) . As noted above, this store is connected with the defendant's 1995 conviction on drug charges in Connecticut. The defendant indicated that Isidro Hernandez was not involved in any drug activity, but was upset about the negative media coverage given to the store. Isidro Hernandez described the defendant as "my most trusted employee."

(101) The Connecticut PSR also indicates that the defendant was employed by the New England Lock and Hardware Company in South Norwalk, Connecticut from December 9, 1994 to February 17, 1995, where he earned $125 per week.

Financial Condition -. Ability to Pay

(102) The defendant reported no significant assets or liabilities.

(103) An inquiry with the Internal Revenue Service regarding the defendant's Adjusted Gross Income and wages was not performed as the defendant reported that he has no social security number.

PART D. SENTENCING OPTIONS

Custody

(104) **Statutory Provisions:** The term of imprisonment is a minimum of 5 years to a maximum of 20 years on the one

count of conviction. 18 U.S.C. § 3559(a) classifies this offense as a Class C felony.

(105) **Guideline Provisions:** Based upon a total offense level of 29 and a criminal history category of VI, the guideline imprisonment range is 151 to 188 months.

Impact of Plea Agreement

(106) The government has entered into a plea agreement with the defendant: if the defendant provides substantial assistance, the government will file a 5K1.1 motion allowing the court to depart from the guidelines. A sentence below the minimum mandatory could also be imposed.

Good Time Provisions

(107) As per 18 U.S.C. § 3624(b), prisoners who are serving a term of imprisonment of more than one year and have shown a satisfactory institutional adjustment shall receive credit toward the service of their sentence of 54 days at the end of each year of their term of imprisonment, beginning at the end of the first year of their term of imprisonment. Such credit vests at the time of accrual and cannot be later withdrawn. Credit for the last year or portion of that year shall be prorated.

(108) Good time cannot be earned on a sentence of one year or less; the sentence must exceed one year, even by one day. According to the Bureau of Prisons, for a sentence of one year and one day, good time would be prorated and would amount to 47 days.

Supervised Release

(109) **Statutory Provisions:** If a term of imprisonment is imposed, a term of supervised release of three (3) years must

be imposed on the one count of conviction, pursuant to 21 U.S.C. § 841(h) (1) (A-C)& 18 U.S.C 3583 (b)

(110) **Guideline Provisions:** As the defendant was convicted under a statute that requires a term of supervised release, the term shall be three (3) years, pursuant to U.S.S.G. § 5Dl.2(b)

Probation

(111) **Statutory Provisions:** The penalties on the statute of conviction, 21 U.S.C. § 841(a) & (b) (1) (A) or (B), prohibit probation.

(112)**Guideline Provisions:** Per 5B1.l(b) probation may not be mposed.

Fines

(113) **Statutory Provisions:** There is a maximum fine of $1 million on the one count of conviction, pursuant to 21 U.S.C. § 841 (b) (1) (A).

(114) **Guidelines Provisions:** The fines range is from $15,000 to $1 million, pursuant to U.S.S.G. § 5El.2(c) (1) & (c) (4).

Special Assessment

(115) A total Special Assessment of $100 is mandatory ($100 on the one (1) count of conviction), pursuant to 18 U.S.C. § 3013.

Interest on Fines and Restitution

(116) As per Title 18, U.S.C. § 3612 (f) , the defendant shall pay interest on any fine or restitution of more than $2,500, unless they are paid in full before the 15th day after sentencing. Interest will be computed daily at a rate pegged to the U.S. Treasury Bills.

(117) The court, as per statute, can determine that the defendant does not have the ability to pay interest and may: (a) waive the requirement for interest; (b) limit the total interest payable to a specific dollar amount; or (c) limit the length of the period during which interest may accrue.\

(118) According to the Claims Unit of the U.S. Attorney's Office, if the Court makes no provisions for the waiver of the interest on a fine over $2,500, interest will continue to accrue on the unpaid balance of the fine if the defendant is incarcerated, is pending appeal or is paying off the fine by installment payments while on probation or supervised release.

Restitution

(119) Restitution is not an issue in this case.

Denial of Federal Benefits

(120) **Sttutory Provisions:** Upon a second conviction for an offense consisting of distribution of a controlled substance, a defendant may be declared ineligible for any or all federal benefits for up to ten (10) years as determined by the court, pursuant to 21 U.S.C. § 862.

(121) **Guideline Provisions:** The court may deny eligibility for certain Federal benefits of any individual convicted of

distribution or possession of a controlled substance, pursuant to U.S.S.G § 5F1.6.

PART E. FACTORS THAT MAY WARRANT DEPARTURE

(122) If the government files a motion certifying that the defendant has provided substantial assistance in the investigation or prosecution of another person who has committed an offense, the Court, per U.S.S.G § 5K1.l, may depart downward from the guidelines. A sentence below the minimum mandatory could also be imposed.

Respectfully submitted,

ROBERT P. RYAN
CHIEF U.S. PROBATION OFFICER

By: s/Nicole F. Barrasso
Nicole F. Barrasso
U.S. Probation Officer
617-748-4420

Reviewed & Approved:

s/ Lisa Dube'
Lisa A. Dube'
Senior U.S. probation Officer

ADDENDUM TO THE PRESENTENCE REPORT

United States v. Pedro Hernandez
Docket No.01-10013

The Probation Officer certifies that the presentence report, including any revision thereof, has been disclosed to the defendant's attorney and counsel for the Government and that the content of the Addendum has been communicated to counsel. The Addendum fairly states any objections they have made.

OBJECTIONS

By the Government

No objections have been submitted by the government.

By the Defendant

No objections have been submitted by the defendant.

Respectfully submitted,
ROBERT P. RYAN
CHIEF U.S. PROBATION OFFICER

By : s/ Nocole F. Barrasso
Nicole F. Barrasso
U.S. Probation Officer

Reviewed and Approved:

s/ Lisa Dube'
Lisa A. Dube'
Senior U.S. Probation Officer
Date: February 7, 2002

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Investigation Report x PSI __AIP __AIU
Connecticut Judicial Department

Office of Adult Probation

COURT NAME OF APPLICANT	COURT	CITY/TOWN
Diaz, Perfiro	GA-2	Bridgeport

TRUE NAME OF APPLICANT	SENTENCING DATE
Diaz, Porfirio Guzman	10/17/95

DOCKET NO. (S)
CR95-109785

ALIAS OR NICKNAME	STATE NO.
Pedro, Tony	321 FO2B 95 25372

OFFENDER DESCRIPTION
PRESENT ADDRESS
43 Concord Street 1st Floor Norwalk, CT.
TELEPHONE NUMBER 853-4735
NAME AND ADDRESS OF CLOSEST RELATIVE
Common-Law Wife:
Gloria Rodriguez, S/A
Telephone Number 853-4735

AGE	DATE OF BIRTH	PLACE OF BIRTH
24	10/4/71	New York, New York

SOC. SEC. NO. 347-64-2519

SEX	HEIGHT	WEIGHT	EYES	HAIR	COMPLEXION
Male	5' 7"	170	Brown	Black	Dark

BUILD	RACE
Med.	Hisp

IDENTIFYING MARKS - Scars on forehead, left cheek, right forearm; missing several teeth
JUDGE
John Kavanewsky

STATE'S ATTORNEY	DEFENSE ATTORNEY
Joseph Corradino	Eroll Skyers

OFFENSE(S)

Possession of Narcotics- 3 cts; Sale of Narcotics 3 counts.
OFFENSE(S) AS CONVICTED
Sale of Narcotics-3 counts
STATUTE(S) & P E NA LTY(IES)
21a-277a NMT 15 years a/o $50,000 each count
ARREST DATE 7/5/95
CODEFENDANTS None
BOND $40,000 CONFINED See Report
CONVICTED BY Guilty Pleas 8/30/95
CRIMINAL RECORD Yes

OFFENSE: On 7/5/95, Connecticut State Police arrested Porfirio Diaz and another party after the pair had arranged to meet a drug customer at the Citgo Gas Station located at the corner of East Main Street and Hamilton Street, Bridgeport. The pair were to sell several ounces of powdered cocaine, but were interrupted by police who confiscated 7.5 grams of purported cocaine. During the arrest and processing procedure, a trooper positively identified Porfirio Diaz as the same Dominican male from whom he had purchased quantities of powdered cocaine at the Hernandez Furniture Store, East Main Street, Bridgeport during the past several months. Diaz was charged with Possession of Narcotics and Possession of Narcotics with Intent to Sell on a Non-Drug Dependent Person on the matter which is pending under CR95-109784. Troopers also arrested Diaz for the sale of cocaine to an undercover officer on 3/9/95, 4/6/95 and 4/13/95, each of these transactions involving Diaz and an undercover officer who secured approximately seven to eight grams of cocaine on each of those occasions. Officers used specially marked SNTF funds for the transactions which were each conducted at the Fernandez East Main Street furniture store.

The scenario involved the undercover officer venturing to that locale where he purchased the drugs with SNTF funds before meeting other officers at prearranged locations to surrender the contraband which field tested positive for

cocaine in each instance.
The trooper, equipped with a body wire, met with Diaz on each occasion with other surveillance officers positioned around the store to observe any related activity. Diaz, while involved in the sales during March and April 1995, was not apprehended by troopers until the July 5, 1995 attempted sale when they took him into custody for all the illegal activity. The offender has since been held in lieu of $45,000.00 bond on the two matters which are both scheduled for disposition on 10/17/95.

OFFENDER'S VERSION: The subject admitted his involvement in the sales, though suggested that one Luis Morales, a resident of a dwelling behind the furniture store, had set Whim up. While reporting that he had purchased drugs -for Morales on several occasions, he was unable to provide any explanation while that party would involve him in the scenario which resulted in him having direct dealings with the state police officers who then proceeded to purchase substantial quantities of cocaine from him on several occasions.

CRIMINAL RECORD

DATE	LOCATION	OFFENSE	DISPOSITION
7/5/95	Ct. State Police	Sale of Narcotics 3 counts	Instant Offense CR95109785
7/5/95	Ct. State Police	Poss. of Narcotics Poss. of Narcotics With Intent to Sell	pending- CR95109784

The subject was held on an additional $5,000.00 bond on this matter.

CURRENT PERSONAL HISTORY

The following information was gleaned with the assistance of Rose Curt-in, a court-appointed interpreter, who accompanied the undersigned officer to the Bridgeport Correctional Center on 9/28/95 for investigative purposes. The offender is the third of five children born to the marital union between Miriam Diaz and Porfirio Guzman, both life long natives of San Juan. Puerto Rico. The 45 year old mother has acted primarily as a homemaker through the years, while the 47 year old father has been a long term construction worker. The offender reported that he is the singular family-member to incur criminal difficulties, adding "my parents are aware of my arrest and confinement." The offender reported that he maintained contact with the pair prior to his July 1995 arrest, and suggested that his common-law wife had since spoken to them, but "I told her not to tell them. They think I'm living in Bridgeport. They would be very upset to learn of what happened. I don't want them to find out."

The offender reported that he resided with the family until relocating to the Norwalk, Connecticut area in 1991. suggesting that the parents were less than thrilled about his leaving home, he reported that they were desirous of having him remain in Puerto Rico in order to assist the family financially. He depicted a non-problematic rearing, noting that the parents provided him with the basic necessities despite their being in the lower economic class.

The offender reported successful completion of 6th grade in Puerto Rico, though reported that he repeated 4th grade on at least two occasions due to marijuana use. He suggested that he may have been a special education student, though reported leaving the academic setting on a voluntary basis at 13 or 14 years of age. The offender has amassed no schooling whatever since that time, and suggested being able to "get by" in Spanish. While born in New York, the offender was schooled in Puerto Rico, a condition which prompted the utilization of Spanish as the primary language amongst all family members. The offender has not been involved in any

school program since confined, though expressed some interest in taking "English as a Second Language" following his anticipated confinement.

The offender was last employed at Hernandez Furniture, East Main Street, Bridgeport in a part-time delivery capacity. Initially hired during the summer of 1994, the offender was able to amass full-time hours beginning in February of 1995. He reported that he was averaging $10.00 to $15.00 per delivery, noting that he was netting some $120.00 to $125.00 weekly in the full—time capacity. The offender reported that Isidro Hernandez, owner of the store, considers him eligible for rehiring upon release. He suggested that the employer was not involved in any drug sale activities, though suggested that he was extremely upset, to see his store's name involved in the media coverage following his arrest in this matter. .."but he forgave me." Hernandez contacted this officer on 10/5/95 offering the following.. ."He was my most trusted employee, a non-problematic individual who is eligible for immediate rehiring.

The offender was previously employed by the New England Lock and Hardware Company, South Norwalk, where he worked from December 9, 1994 through February 17, 1995 (verified). The offender earned $125.00 net weekly in the full-time position of 40 hours weekly. The offender reported performing seasonal jobs for varied landscaping firms in the Bridgeport area for some 8-9 months, though was unable to recall the names of any of the former employers. He denied collecting unemployment, city welfare or state welfare benefits at any time since residing in Connecticut.

The offender did report being employed on a full-time basis with Alberto Perez Construction, a four-year opportunity which paid him $160.00 weekly prior to his relocation from Puerto Rico. The offender suggested that he left the site to "come to Connecticut for a better life." The offender reported that he had initially lived in the Bridgeport area for two years prior to moving to Norwalk with the common-law wife. While he has never married nor fathered any children, the

offender involved himself in a relationship with one Gloria Rodriquez, a native of Bronx, New York, two years ago. While the offender was "unsure" as to whether Rodriquez had ever been involved in criminal difficulty, a review of existing records indicate that she has four felony narcotics convictions spanning January 18, 1989 through November 20, 1991. Rodriquez was confined on each of those matters, receiving an effective term of 4 years, 4 years, 4 years and 51 months respectively. Released to Parole officials in December, 1993, she was discharged "end of sentence" on 9/21/94.

Records reveal that Rodriquez graduated from William Howard Taft High School, Bronx, New York in 1976, later attending Bronx Community College where she took some nursing courses prior to her departure. She subsequently wed one Wilson Vega, parenting two children (now 17 and 15 years old), in this union. The couple separated in 1979 with Vega moving to Pennsylvania, leaving the children with their mother.

Records indicate that Rodriquez had worked in clerical positions for 1982 to 1985, then securing AFDC benefits during 1986 through 1988. Records indicate that she then worked as a bartender, although returned to drug sale activity due to inadequate income.

Records would suggest that Rodriquez was involved in several drug sales opportunities though she denied that she was a drug user herself. Records indicate that she was remorseful for the illegal activity, suggesting that she was desirous of entering the nursing field after securing more of the vocational training.

The offender suggested that the offender is so involved at present, though could not volunteer the name of her employer. He suggests that she "works with handicapped people in Norwalk", a position apparently entered into following her 1993 discharge from correctional confines. While reporting that she is earning $9.50 hourly of as a certified nurse, a review of her existing records would

suggest that she may be employed in either a private duty or home health aide capacity.

Rodriquez directed a letter for the court's consideration, this dated 9/7/95 and containing the following.. ."My name is Gloria Rodriquez and I've been Porfirio Diaz' common-law wife for the past two years, since March 1993. Porfirlo has been a wonderful husband, a hard working man, very responsible with his responsibility in the home. Porfirio has held a steady job in the past 1 ½ year since we have been together. We have plans to get married, so we can start to raise a family. Porfirio has never gotten in trouble before. He is well liked by all his acquaintance and family. He made a mistake, but he 'is only human and everyone makes a mistake in their lives at one point or another. He feels bad for what he has done, and I can assure you, once he does his time, you will no longer see him get into any trouble. I stand by Porfirio, and will stand by him always because he is worth while waiting for. He is a good~man.I'm a certified nurse, and together we have made a home for ourselves. Thank you for your attention." Sincerely: Gloria Rodriquez.

As Rodriquez' two children reside with their father in California, the apartment secured by Rodriquez and Diaz two years ago calls for a $550.00monthly obligation for the arrangement which is listed in both names. The offender depicted Rodriquez as "a good woman. I live with her, but can'tget real serious with her due to my drug problem. She's been very good to me. We plan to wed after I get out." The offender reported that Rodriquez and the former employer, Isidro Hernandez, are the two sole parties to have visited him since his confinement three months ago. The offender reports that the future of this relationship is predicated on his remaining drug free, adding "she would be very upset if I was arrested or I returned to drugs." While several efforts were made to contact Rodriquez, the undersigned officer had no success as of this writing. As the offender was unable to provide the name for the current organization for which she worked, it was difficult to reach her during the normal course

of business hours. In light of Rodriquez' prior criminal record regarding drug sale activity, it is difficult to assess what affect might result from the couple continuing to live together.

The offender denied any physical abnormalities or mental health interventions to date. He reported that he has been a long term beer consumer, denoting this primarily as a weekend habit.. ."I drink several beers daily from Friday to Sunday. I've gotten drunk, but I've never blacked out or had any treatment." The offender reported that Rodriquez is an infrequent alcohol consumer, suggesting that the pair "had argued about my drinking.. .but she is really more upset about my drug addiction."

The offender reported beginning marijuana use in the fourth grade, a habit which he maintained until he began the intranasal use of cocaine three months after his 1991 arrival in this area. The offender then proceeded to crack use, a habit which he had maintained for at least three years. Reporting that he used three to four times weekly,, he then noted.. ."I did whatever I could find and afford. I bought cocaine and cooked it up myself up to 2-3 grams at a time."

The offender reported that Rodriquez was unaware of his drug use until late 1994, suggesting that "I only really got addicted over the past ten months. I got drugs for this guy and then he set me up with the State Police, but I don't know why." Diaz reported that he had procured drugs for this

- individual who was purchasing quantities of them and from which he would take some for himself.. ."I spent all my money on drugs. I have no more money." The offender has not involved himself in any NA or AA programs, nor has he entered the Tier I substance abuse treatment program since confined.

The offender reports that he is desirous of entering a residential program, suggesting that he could not be trusted if released without said treatment. He reports that he was involved in no other sales save for the ones noted in the offense section of this report.. ."I just bought drugs." The

offender denies that he has used any drugs since confined, though reported that he was unable to remain drug free for any longer than a 2 or 3 day period while in the community. He is hopeful that the court will consider placing him in a residential treatment program in lieu of any further confinement.

This 24 year old party has entered guilty pleas to three separate transactions in which he sold quarter-ounces of cocaine to undercover police officers/Connecticut State troopers at or near his place of employment. The offender denied any other drug sale activities, suggesting that he had been set up by an individual residing behind the furniture store where he was employed.

The offender emanates from an apparently intact family background which includes no other criminally involved members. The offender reported a short term academic history and several years of employment in Puerto Rico prior to venturing to Bridgeport and then Norwalk in 1991 and 1993 respectively. The offender has enjoyed moderate success in the employment area since arriving here, though would appear to have been diverted by an escalating drug habit which caused him using escalating amounts of cocaine to fuel his addiction.

While the offender depicts a supportive relationship with his common-law wife, Gloria Rodriquez, ft is somewhat disconcerting to note that that party herseLf has been convicted on four separate occasions for drug sale activity. While discharged to Parole officials in 1993, it would appear that Rodriquez has remedied her old ways, securing employment in the Home Health Aide/Health Care field. The pair have lived together without child-rearing responsibilities.

The offender has been a long term substance abuser as evidenced by his recollection of smoking marijuana on a regular basis since fourth grade. While his drug use has obviously escalated, it would appear that it became almost necessary for him to involve himself in drug sale activity.

While the offender is desirous of securing some residential

treatment, it would appear that some period of confinement is warranted at this point in time. It is suggested that the court impose the normal special conditions attendant with such a conviction, and encourage him to embark on the same remedial course as that of his common-law wife.

SUPPLEMENTAL INFORMATION ATTACHED (Specify)

BASED ON THE INVESTIGATION THE FOLLOWING IS RECOMMENDED:

PROBATION: Split Sentence

RECOMMENDATION

SPECIALCONDITIONS/CIRCUMSTANCES

RESPECTFULLY SUBMITTED
JAMES VANVOLKENBURGH

s/ James Vanvolkenburgh

COUNTERSIGNED BY

s/ Mary Kerton

U.S. Department of Justice
United States Attorney
District of Massachusetts

Main Reception: (617) 748-3100
John Joseph Moakley United States Courthouse
I Courthouse Way
Suite 9200
Boston. Massachusetts 022 /0
November 27, 2001

Richard N. Welsh
80 Worcester Street
North Grafton, MA 01530

Re: United States v. Pedro Jose HernandeZ
Criminal No. 01-10013-MEL

Dear Mr. Welsh:

This letter sets forth the Agreement between the United States Attorney for the District of Massachusetts ("the U.S. Attorney") and your client, Pedro Jose HernandeZ ("Hernandez") in the above-captioned case. The Agreement is as follows:

1. Change of Plea.

At the earliest practicable date, Hernandez shall plead guilty to Count One of the above-captioned Indictment: United States v. Pedro Jose Hernandez, Criminal No. 01-10013-MEL, charging him with conspiracy to import heroin, in violation of 21 U.S.C. § 963. Hernandez expressly and unequivocally admits that he in fact knowingly, intentionally and willfully committed the crime charged in Count One of the Indictment, and is in tact guilty of that offense.

The United States Attorney also agrees that he will not file any notices pursuant to 21 U.S.C. §851.

2. Penalties

Hernandez faces the following maximum penalties: a period of incarceration not to exceed twenty (20) years, a maximum fine of $1,000,000, a period of supervised release of three (3) year: and a special assessment of $100.00

As a result of his conviction in this case, Hernandez may also face a mandatory minimum sentence of 5 or 10 years' imprisonment, pursuant to 21 U.S.C. § 841(b) (1) (A) and § 841(b) (1) (B).

Hernandez may also be deportable and/or excludable by the United States Immigration and Naturalization Service as a consequence of his conviction of the offenses to which he is pleading guilty.

3. Sentencing Guidelines

The parties will take the following positions at sentencing under the United States Sentencing Guidelines:

(a) Hernandez reserves the right to argue for a reduction based on role pursuant to U.S.S.G. § 3B1.2. The United States Attorney reserves the right to oppose that argument, and reserves the right to argue for any applicable role enhancement under U.S.S.G. § 3B1.1.

(b) Based on Hernandez' prompt acceptance of personal responsibility for the offense of conviction in this case, and information known to the U.S. Attorney at this time, the U.S. Attorney agrees to recommend that the Court reduce by three levels Hernandez' Adjusted Offense Level under U.S.S.G. § 3El.1.

The U.S. Attorney specifically reserves the right not to recommend a reduction under U.S.S.G. § 3E1.l it, at any time between his execution of this Agreement and sentencing Hernandez:

(a) Fails to admit a complete factual basis for the plea;

(b) Fails to truthfully admit his conduct in the offenses of conviction;

(c) Falsely denies, or frivolously contests, relevant conduct for which Hernandez is accountable under U.S.S.G. § 1131.3;

(d) Fails to provide truthful information about his financial status;

(e) Gives false or misleading testimony in any proceeding relating to the criminal conduct

charged in this case and any relevant conduct for which Hernandez is accountable under U.S.S.G. § lBl.3;

(f) Engages in acts which form a basis for finding that Hernandez has obstructed or impeded the administration of justice under U.S.S.G. § 3C1.l;

(g) Intentionally fails to appear in Court or violates any condition of release;

(h) Commits a crime;

(i) Transfers any asset protected under any provision of this Agreement; and/or

(j) Attempts to withdraw his guilty plea.

Hernandez expressly understands that he may not withdraw his plea of guilty if, for any of the reasons listed above, the U.S. Attorney does not recommend that he receive a reduction in Offense Level for acceptance of responsibility. Hernandez expressly understands that, in addition to declining to recommend an acceptance-of _responsibility adjustment, the Government may seek an upward adjustment pursuant to U.S.S.G. § 3Cl.l if Hernandez obstructs justice after the date of this Agreement.

The U.S. Attorney and Hernandez are unaware at this time of any basis for a departure from the sentencing range established by the United States Sentencing Guidelines. In the event that either the U.S. Attorney or Hernandez subsequently learns that there is a basis for moving for

departure, that person will give written notice to the other party of the basis for such departure not less than fourteen days before sentencing. Any basis for departure for which written notice is not received at least fourteen days before sentencing is hereby expressly waived and cannot be argued at the time of sentencing. The U.S. Attorney expressly reserves the right to seek an upward departure pursuant to U.S.S.G. § 4A1.3 should any of Hernandez' prior state convictions be vacated subsequent to the execution of this Agreement.

In the event of an appeal from, or collateral challenge to, Hernandez' sentence, the U.S. Attorney reserves his right to argue the correctness of Hernandez' sentence and the manner in which the District Court determines it.

4. Payment of Mandatory Special Assessment

Hernandez agrees to pay the mandatory special assessment to the Clerk of the Court on or before the date of sentencing, unless Hernandez establishes to the satisfaction of the Court that Hernandez is financially unable to do so.

5. Cooperation

a. Terms Of Cooperation

Hernandez agrees to cooperate fully with law enforcement agents and government attorneys. He must provide complete and truthful information to all law enforcement personnel. If his testimony is requested, he must testify truthfully and completely before any grand jury, and at any hearing and trial. Hernandez must answer all questions put to him by any law enforcement agents or government attorneys and must not withhold any information. He must not attempt to protect any person or entity through false information or omission, or to implicate falsely any person or

entity. Upon request, he must furnish all documents, objects and other evidence in his possession, custody or control that are relevant to the government's inquiries.

Hernandez understands that he has a right to have counsel present when communicating with representatives of the government concerning the criminal conduct with which he has been charged. To facilitate his cooperation, Hernandez hereby knowingly and voluntarily waives this right with respect to all debriefings by law enforcement agents and government attorneys and all appearances to testify. This waiver may be revoked at any time by a specific request by Hernandez or his counsel without otherwise affecting the terms or enforceability of this Agreement.

To enable the Court to have the benefit of all relevant sentencing information, Hernandez waives any rights he may have to prompt sentencing and will join in any requests by the U.S. Attorney that sentencing be postponed until Hernandez' cooperation is complete. Hernandez understands that the date of his sentencing is within the sole discretion of the Court and that this Agreement may require his cooperation to continue even after he has been sentenced. Hernandez' failure to continue to

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tocooperate pursuant to the terms of this Agreement after sentence is imposed shall constitute a breach of this Agreement by Hernandez.

b. Substantial Assistance Motion

In the event that Hernandez provides substantial assistance in the investigation or prosecution of another person who has committed a criminal offense, the U.S. Attorney agrees that, at or before the time of sentencing, the u.s. Attorney will make a motion under U.S.S.G. § 5K1.l, and, if the U.S. Attorney determines it to be appropriates 18 U.S.C. § 3553(e) so that the sentencing court may impose a sentence below that which otherwise would be required under the Sentencing Guidelines and the relevant statutes. The determination whether Hernandez has provided substantial assistance rests solely in the discretion of the U.S. Attorney and is not subject to appeal or review. The u.s. Attorney expressly reserves the right to decline to file a motion pursuant to U.S.S.G. § 5Kl.l if Hernandez violates any condition of his pretrial release, violates any of the requirements of honesty and candor detailed in paragraph 5(a) above, or engages in any criminal conduct after the date he signs this Agreement. The U.S. Attorney reserves the right, in his sole discretion, to file a motion under U.S.S.G. 5 5Kl.1 but not under 18 U.S.C. § 3553(e). Hernandez may not withdraw his plea if the U.S. Attorney determines that Hernandez has not rendered substantial assistance, if the U.S. Attorney determines to file a motion under U.S.S.G. § 5K1.1 but not under 18 U.S.S.G. § 3553(e), or if the Court refuses to grant the U.S. Attorney's motion for a downward departure.

c. Sentence Recommendation,with Substantial Assistance

If Hernandez provides substantial assistance, subject to all the provisions of paragraphs 5(a) and (b)

above, the U.S. Attorney will advise the sentencing judge of the full nature, extent and value of the assistance provided by Hernandez.

The U.S. Attorney reserves the right to recommend a particular sentence or sentencing range, or to make no recommendation at Hernandez' sentencing.

d. Letter Immunity

In return for Hernandez' full and truthful cooperation, the U.S.Attorney agrees not to use any information provided by Hernandez pursuant to this Agreement or pursuant to the proffer letter dated September 5, 2001 (or any information directly or indirectly derived therefrom) against Hernandez in any criminal case except in a prosecution (1) for perjury or obstruction of justice, or for making a false statement after the date of this Agreement; or (2) for an act of physical violence against the person of another, or conspiracy to commit any such act of violence. The U.S. Attorney reserves the right to respond fully and completely to all requests for information by the District Court and U.S. probation Office in this case. All such disclosures, however, shall be made subject to the provisions constraining the use of this information by the District Court and U.S. Probation Office contained in U.S.S.G. § 1B1.8(a) and the commentary thereto. Notwithstanding the provisions of U.S.S.G. § 1B1.8(b) (5) and the commentary thereto, the U.S. Attorney agrees to take the position that at the time of sentencing information provided by Hernandez pursuant to this Agreement should not be used either in determining where within the applicable guideline range to sentence Hernandez or in determining whether, or to what extent, a departure from the Sentencing Guidelines is warranted.

If the U.S. Attorney determines that Hernandez has breached this Agreement by making any false, incomplete or misleading statement, or by providing any false, incomplete or misleading information to any law enforcement personnel,

grand jury or court, the U.S. Attorney may terminate this Agreement as set forth below, and may also prosecute Hernandez for any and all offenses that could be charged against him in the District of Massachusetts, including, but not limited to, false statements and perjury.

6. Court Not Bound By Agreement

The sentencing recommendations made by the parties and their respective calculations under the Sentencing Guidelines are not binding upon the U.S. Probation Office or the sentencing judge. Within the maximum sentence which Hernandez faces under the applicable law, the sentence to be imposed is within the sole discretion of the sentencing judge. Hernandez' plea will be tendered pursuant to Fed. R. Crim. p. 11(e) (1) (B). Hernandez may not withdraw his plea of guilty regardless of what sentence is imposed. Nor may Hernandez withdraw his plea because the U.S. Probation Office or the sentencing judge declines to follow the Sentencing Guidelines calculations or recommendations of the parties. In the event that the sentencing judge declines to follow the Sentencing Guidelines calculations or recommendations of the U.S. Attorney, the U.S. Attorney reserves the right to defend the sentencing judge's calculations and sentence in any

subsequent appeal or collateral challenge.

7. Information For Presentence Report

Hernandez agrees to provide all information requested by the U.S. Probation Office concerning his assets.

8. Civil Liability

By entering into this Agreement, the u.s. Attorney does not compromise any civil liability, including but not limited to any tax liability, which Hernandez may have incurred or may incur as a result of his conduct and his plea of guilty to the charges specified in paragraph one of this Agreement.

9. Rejection of Plea By Court

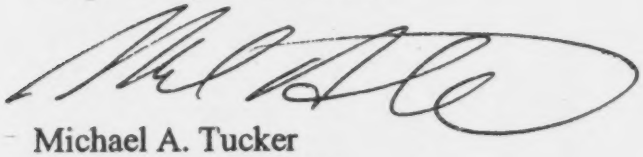
Should Hernandez' guilty plea not be accepted by the Court for whatever reason, or later be withdrawn on motion of Hernandez this Agreement shall be null and void at the option of the U.S. Attorney.

10. Breach of Agreement

If the U.S. Attorney determines that Hernandez has failed to comply with any provision of this Agreement, has violated any condition of his pretrial release, or has committed any crime following his execution of this Agreement, the U.S. Attorney may, at his sole option, be released from his commitments under this Agreement in their entirety by notifying Hernandez, through counsel or otherwise, in writing. The U.S. Attorney may also pursue all remedies available to him under the law, irrespective of whether he elects to be released from his commitments under this Agreement. Further, the U.S. Attorney may pursue any and all charges which have been, or are to be, dismissed pursuant to this Agreement. Hernandez recognizes that no such breach by him of an obligation under this Agreement shall give rise to grounds for withdrawal of his guilty plea. Hernandez understands that, should he breach any provision of this agreement, the U.S. Attorney will have the right to use against Hernandez before any grand jury, at any trial or hearing, or for sentencing purposes, any statements which may be made

by him, and any information, materials, documents or objects which may be provided by him to the government subsequent to this Agreement, without any limitation. In this regard, Hernandez hereby waives any defense to any charges which he might otherwise have under any statute of limitations or the Speedy Trial Act.

Respectfully Submitted,



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(3)

Supreme Court, U.S.
FILED
05-17 APR 19 2005
OFFICE OF THE CLERK

DOCKET NO. ____

IN THE

SUPREME COURT OF THE UNITED STATES

United States

Respondent

v.

Pedro Jose Hernandez, a/k/a Juan Pedro, a/k/a Pedro Jose

Petitioner

On Petition For Writ Of Certiorari
To The
United States Court Of Appeals For The First Circuit

APPENDIX TO PETITION FOR WRIT OF CERTIORI
Volume 2 of 2

Michael A. Tucker
Counsel of Record For Petitioner
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A2

Sentencing Transcript of the United States District Court for the District of Massachusetts

United States v. Pedro Jose Hernandez

Docket No. 01-10013

Before Judge Morris E. Lasker

Held on August 21, 2002

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETT

UNITED STATES OF AMERICA,
Plaintiff

v.

PEDRO JOSE HERNANDEZ, Criminal No. 01-10013
Defendant SENTENCING HEARING

BEFORE THE HONORABLE MORRIS E. LA.SKER
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:
For the Government:
Susan Poswistilo, United States Attorneys Office, 1 Courthouse Way, Boston, MA 02210
For the Defendant:
Richard Welsh, Esquire, 80 Worcester Street, North Grafton, MA 01536

One Courthouse Way
Boston, Massachusetts 02210
Wednesday, August 21, 2002
Janet M. Konarski, RMR, CRR
Official Court Reporter
John J. Moakley U.S. Courthouse
1 Courthouse Way, Suite 3510
Boston, Massachusetts 02210
(617) 439-8866

(The following hearing was held in open court before the Honorable Morris E. Lasker, United States District Judge, United States District Court, District of Massachusetts, at the United States Courthouse, 1 Courthouse Way, Boston, Massachusetts, on August 21, 2002, commencing at 2:39 p.m.)

THE CLERK: Court is now in session.

THE COURT: Good afternoon, everybody.

MS. SAWYER: Good afternoon.

THE CLERK: This is Criminal 00—11003, United States of America versus Pedro Jose Hernandez. Would the parties identify themselves and who they represent.

MS. POSWISTILO: Good afternoon, Susan Poswistilo for the United States.

MR. WELSH: Good afternoon, Richard Welsh for the defendant.

THE COURT: Good afternoon, Mr. Welsh. Has the interpreter been sworn?

THE CLERK: No.

(Margarita Cardenas, the interpreter, was sworn.)

THE CLERK: Would you please give the court your full name, spelling the last. Margarita Cardenas, C-A-R-D-E-N-A-S.

THE COURT: Ms. Poswjstilo, before I call on Mr. Welsh, is there anything you wish to say, on behalf of the government any know this case pretty well by now.

MS. POSWISTILO: Your Honor, I just wanted to alert

the Court the government did file a motion in this case.
THE COURT: I appreciate that. Although next time when you have a case, I hope you'll do it a little sooner than
the day before.
MS. POSWISTILO: I most definitely strive to do that at all times, your Honor. It was beyond my control.
THE COURT: Mr. Welsh?
MR. WELSH: I will be addressing the court. One of the issues that I raised in my sentencing memorandum was his
family circumstances.
THE COURT: Yes.
MR. WELSH: His common law wife is present in the court. I would ask if I might call her to the stand, so she can explain the family circumstances.
THE COURT: Of course. Do you want her to come up to the witness stand?
MR. WELSH: Yes, Judge. That would be fine. Which side do you want her at?
THE COURT: Over here.
AURA MARTINEZ, SWORN
THE COURT: Do you understand English, Ma'am?
HE WITNESS: I understand.
THE COURT: Sit down and relax. I know it's a tough day, but --
THE CLERK: Would you please give your full name.

THE WITNESS: Okay. Aura, A-U-R--A, Martinez, M-A-R-T-I-N-E-Z.
THE COURT: Thank you.
BY MR. WELSH:
Q. Ms. Martinez, do you know the defendant in this case, Pedro Hernandez?
A. Yes.
Q. What is his relationship to you?
A. We was living together a few years.
Q. Okay. And how long have you been living together?
A. From 1997.
Q. And have you lived together as husband and wife?
A. Yes.
Q. Although you haven't legally married?
A. Not legally married, but we lived together like husband and wife.
Q. Like husband and wife?
A. Yes.
Q. And did you have one child together before he came into prison here?
A. Yes.
Q. And how old is that child?
A. Almost three years old.
Q. At the time that he was detained here in this Federal action, were you pregnant with his second child?

A. Yes.
Q. How many months pregnant were you?
A. Four months.
Q. And, so, then he's been detained since February, at least, of 2001?
A. Mm-hmm.
Q. Is that correct?
A. Yes.
Q. And, so, you had the child while he was locked up?
A. Yes.
Q. And do you have two children besides of your own?
A. Yes.
Q. So, you have four children?
A. Four children.
Q. Before he was detained in this Federal proceeding, was he a father to all four children?
A. Yes.
Q. Was he a good father?
A. Yes, please.
Q. And did he help to support the children?
A. Yes. He helped me out.
Q. Now, since he's been detained in this Federal proceeding, have you been the sole support of these children?
A. Mmm-hmmm.
Q. And can you tell the Judge now, talk to the Judge

directly. Tell him what you've had to go through since he's been detained in order to support the children.
A. It's very hard. I have to drive every day 5 o'clock in the morning to Lawrence. I live in Peabody, and I work in Lynn for Lynn Public Schools. I have to go all the way clown to leave my children with my mom, go back to Peabody, leave another two in the school and go back to Lynn to my work. Then when I come back in the afternoon, the same thing, go back to Peabody, pick up two, then go back to Lawrence to take another two, small ones, and go back to my home.
THE COURT: That's rough. So, do you --
THE WITNESS: Yes, it is.
Q. Do you work, you said, for the school department, the City of Lynn?
A. Yes, for eight years.
Q. You work in the Bilingual Department?
A. Yes.
Q. Does much of the money you earn have to be used for babysitting?
A. Yes.
THE COURT: What is your job?
THE WITNESS: I teach Braille for blind students.
THE COURT: Oh. How did you learn that?
THE WITNESS: I take a few courses, and somebody from the mission department gave me the training.

THE COURT: May I ask you what your salary is?
THE WITNESS: Almost $600 a week, just 30 hours.
THE COURT: I see.
THE WITNESS: But, I do babysitting, clean houses, too, to make extra money.
THE COURT: You're some lady.
Q. And you've been visiting Pedro on a regular basis down in Plymouth?
A. Every week, yes.
Q. Every week. And during one of those visits, did you have a problem?
A. Yes.
Q. Tell the Judge what happened.
A. I had an accident in the car when I came back from there, dislocating my right arm, and I broke my chin right here (indicating).
Q. That is while you were visiting Pedro down in Plymouth?
A. Yes. Little Pedro, he's three years old, he was crying because he wanted to stay with his father after the visit, an he was in the back chair. I was trying to speak with him, relax him, calm him down. He's still crying. When I turn around, another car cut in my lane, and I tried to brake, but I couldn't. I lost control of the car.
Q. All right. Now, when Pedro is released from confinement, you understand that the probability is he'll be deported to

the Dominican Republic?
A. Yes. I know that.
Q. What will you do?
A I'm going to go with him and my children.
THE COURT: Is that your country?
THE WITNESS: No.
THE COURT: Were you born there?
THE WITNESS: No.
THE COURT: Where were you born?
THE WITNESS: Venezuela. A few years ago I've been there, to visit his mother. I like the country.
Q. You'll be reuniting the family in the Dominican Republic
when he's released?
A. Mm-hmm.
Q. If he's confined out of state, say in Pennsylvania or New
York, will you be able to visit with him?
A. I don't think so. It's too hard, with my four children, to bring my four children out of the state.
MR. WELSH: That will be because I'll be asking you to consider recommending ——
THE COURT: Of course I'll recommend, but I can't control it.
Q. What can you tell the judge about Pedro's mother?
MS. POSWISTILO: Excuse me. I didn't hear about. Pedro's what?

MR. WELSH: Pedro's mother.
A. She's very sick. She knows that Pedro is in the jail. She has a stroke, then she had a heart attack. She's in critical medical condition right now.
Q. She's living in the Dominican Republic?
A. Yes. She didn't see Pedro for maybe 19 years.
MR. WELSH: All right. I don't have anything further, Judge.
THE COURT: Thank you very much, Ma'am.
THE WITNESS: You're welcome.
THE COURT: Mr. Welsh, I appreciate your bringing this matter to my attention. It's perfectly appropriate. As you know, as we all must know, it is not possible in the circumstances of this case simply to tell Mr. Hernandez God bless you and go, so I'd like to hear what you have to say as to what you think is a realistic disposition of this case.
MR. WELSH: I will, Judge. As you know, the government has filed a motion under 5(k) for substantial assistance.
THE COURT: Yes.
MR. WELSH: As a matter of fact, he has I think rehabilitated to the point that he has actually indicated a willingness to testify against his own cousin, Isidro, who was perhaps one of the organizers in this matter. I will point out I've been involved in this case